IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 948 OF 2005

Bajrang Sahadu Shinde ... Appellant

V/s

Yashwant Bhiva Shinde ... Respondent

Mr. P.J. Pawar for the appellant.

Mr. S.A. Sawant for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 13TH SEPT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pune, dated 25.4.2004 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, Jr.Divn., Vadgaon Maval, dated 3.2.2004 decreeing the plaintiff's suit for perpetual injunction against the defendant.

2. I have heard learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit for perpetual injunction against the defendant stating that the property was originally owned by one Kondu Bhairu Shinde and plaintiff had purchased the said property on 5.12.1996 by way of registered sale deed. Prior to that, late Kondu had also executed an agreement in favour of the plaintiff on 8.11.1990. The original owner has executed a sale deed in favour of plaintiff after removing defects from revenue records. The possession of the suit property was handed over to plaintiff by said late Kondu prior to execution of agreement to sale. The said possession of plaintiff over the suit property is confirmed by way of execution of sale deed dated 5.12.1996 and plaintiff's name was mutated in revenue record. Therefore, the plaintiff is in lawful possession of the suit property by virtue of his ownership title and is in exclusive possession of the suit property. However, the defendant obstructed his possession and hence the suit is filed.

The defendant contested the suit on various grounds inter-alia submitting that plaintiff had no right, title and interest on the suit property and, as such, the suit was sought to be dismissed which was only for perpetual injunction simplicitor.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that plaintiff has proved his ownership and possession over the suit property and obstructed the defendant from disturbing plaintiff's possession and decreed the suit. Hence the present appeal.

5. The defendant carried the appeal to the District Court, Pune. The learned Addl. Disttrict Judge, Pune, after hearing both parties on the basis of available evidence came to the conclusion on the basis of available evidence that plaintiff had failed to prove that the suit land was allotted to deceased Kondu in partition dated 9.9.1988. It was also held that the plaintiff had failed to prove that by virtue of sale deed in the year 1996, plaintiff become the owner of the suit property and further it was held that the plaintiff failed to prove that he was in possession of the suit property referable to valid title and such possession was obstructed by the defendant and dismissed the suit by allowing the appeal. Hence the present appeal is filed.

6. At the outset, it may be noted that there is no

substantial question of law involved in this appeal. The learned counsel for the appellant submitted that the substantial question of law was to the effect that the partition deed was executed between Bhiva and Kondu during their life time and the document was produced on record and, therefore, the appellant cannot be held responsible for defects left by deceased Bhiva and Kondu and hence the lower appellate Court erred in recording the evidence. It was further submitted that the learned appellate Court erred by ignoring to give proper effects of the facts proved by the appellant by producing documentary evidence. In my considered view, both these points are issues of facts and cannot be looked into by this Court in the second appeal. There is no substantial question of law involved in this appeal. Besides these aspects, it must be noted that perusal of the judgment of the lower appellate Court shows that it has not only appreciated the entire evidence in proper perspective but has also categorized as many as 20 reasons so as to discard the documents produced on record in order to held that the document of so-called partition/memorandum of partition dated 9.9.1988 cannot be accepted as genuine and depicting true state of affairs of the family. Perusal of the said 20 grounds recorded by the learned appellate Court shows that there

is no reason whatsoever that partition deed cannot be accepted as genuine document and, as such, it cannot be said that Kondu had legal title to transfer the suit proeprty in favour of the present appellant.

7. Be as it may, for the reasons recorded above, I am satisfied that the appeal is devoid of any merits and, as such, deserves to be dismissed.

Hence the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1476 of 2005 also stands dismissed with no order as to costs.

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